

15 *H. Hargrave*
Arbitrium Redivivum :

OR THE

L A W

OF

Arbitration:

COLLECTED

From the Law-Books both

Ancient and Modern, and deduced
to these Times : Wherein the whole
Learning of Awards or Arbitrements
is methodically treated.

WITH

Several Forms of Submissions by way of Cove-
nants and Bond : As also several Forms of
Arbitrements or Awards.

By the Author of *Regula Placitandi*.

L O N D O N,

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cery-Lane near Serjeants-Inn, 1694.



TO THE
READER.

A *Retirement* is much esteemed and greatly favoured in our Common Law ; the end thereof being privately to compose Differences between Parties by the Judgment of honest Men ; and to prevent the great Trouble and frequent Expence of Law-Suits : This therefore being rightly understood and practised, may undoubtedly save our Purfes, and procure much

A. 3 Peace

To the Reader.

Peace and Tranquility amongst us: But on the other hand through Ignorance and Defect of good Arbitrators we may run our selves into far greater dangers, than we thereby thought to avoid, and so make that our Ruine which is intended for our Happiness. For though it be said, That the Power of Arbitrators is such, That they may judge according to their Will and Pleasure, and therefore greater than that of any publick Judge; yet they must keep themselves within their Jurisdiction, and

To the Reader.

and their Awards must be measured by the Rules of the Law. 'Tis true, they are not so tied up to Formalities as our Lawyers; notwithstanding there are many things must be observed to make their Arbitrements good and effectual. All which are methodically laid down in this small Treatise; and though much may be said concerning Arbitrements in the Law-Books, yet it is mostly mixt with other Matters, or else lies so privately under the Shadow of some other Title, that it hath
not

To the Reader.

not been so much as heard of by those who are most concerned to make use of it ; and therefore answers not the End for which it was intended. A general Good should be generally known and enjoyed. To this End therefore this Treatise is compiled, that the People in general may have Benefit thereby, which is the chief End of the Publisher, who is a hearty Well-wisher to Peace and the Publick Interest.

Vale.

THE

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THE
LAW
OF
Arbitrement.

ARBITREMENT in Latin *Arbitrium*, is an Award, Determination or Judgment made, or given between persons in Controversie, by the Arbitrators or Umpire, being such person or persons as are thereunto elected, by the Parties controverting, for the ending and pacifying the said Controversie according to the Submission or Compromise of the said Parties, and agreeable to Reason and good Conscience.

Arbitrement
what.

8 E. 4. 1. & 10. a.

9 E. 4. 43. b.

16 E. 4. 9. a.

19 E. 4. 1. a.

21 E. 4. 39. a.

19 H. 6. 36.

37. a. b.

Dyer 236.

10 Eliz. pl. 39.

B

It

The Law of Arbitrement.

Why so called.

It is said to be called an Arbitrement, either because the Judges elected therein, may determine the Controversie not according to the Law, but according to their Opinion and Judgment as honest Men: Or else because the Parties to the Controversie, have submitted themselves to the Judgment of the Arbitrators, not by Compulsion or Coertion of the Law, but of their own accord. It is also called an Award, of the French Word *Agarder*, which signifies to *decide* or *judge*, and sometime in the Saxon or Old English, it was called a *Love-Day*, because of the Quiet and Tranquility that should follow the ending of the Controversie.

Incidents to
Arbitrement.
4 Eliz. Dyer,
217.2.

There are five things incident to every Award or Arbitrement.

1. Matter of Controversie.
2. Submission to the Arbitrators.
3. The Parties to the Submission.
4. The

4. The Arbitrators or Umpire.
5. The manner of the Award or yielding up their Judgment.

CHAP. I.

*First therefore we must see what Matters in Controversie may be sub-
to Arbitrement, and what not.*

1. **T**Hings and Actions meerly personal and uncertain are Things Incertain.
arbitrable, as Trespass, &c. though 22 H. 6. 39.
the Submission be not by Deed. 14 H. 4. 24.
4 H. 6. 17.

Arbitrement ought to be of a Duty uncertain, 6 H. 4. 6. a. 2 H. 5.
Fitz. 23. 4 H. 6. 17. b. 10 H. 7. 4. a.

2. But things certain are not Things cer-
arbitrable (but when the Submission is by Specialty) if they be 4 H. 6. 17.
not joined with others uncertain, as 2 H. 5. 2.
Debt with Trespass. 12 R. 2. Dyer.
33 H. 8. f. 51.
Pl. 14.

Controversie of Debt alone cannot be put into Arbitrement; but Contract of Debt with another thing may well be put in Arbitrement, 45 E. 3. 16. a. 2 H. 5. Fitz.
Arbit. 23. 8 H. 5. 3. b. 4 H. 6. 17. b.
10 H. 7. 4. a.

Debt upon Contract without Specialty by the Resolution of some Books may be put in Arbitrement, 45 E. 3. 16. a. 6 H. 4. 6. a. 4 H. 6. 18. a.

Chattels real
or mixt.

9 H. 6. 60.

14 H. 4. 24.

3 H. 4. 6.

3. Chattels real or mixt, as Chattels of Lands, are not arbitrable by themselves, if the Submission be not by Specialty.

In Real Actions Arbitrement is no Plea.

In Mixt Actions Arbitrement is no Plea, if the Submission be not by Deed, 19 H. 6. 37.

In Personal Actions on personal Wrongs Arbitrement is a Plea, although the Submission be not by Deed, 14 H. 4. 24.

In a Controversie concerning the Property of Real Chattels Arbitrement transfers the Property of them according to the Award, 21 H. 7. 29. b.

In Chattels personal Arbitrement transfers the Property.

In personal Duty grounded upon a Specialty, Plea of Arbitrement is not available, 3 H. 4. 1. b. 8 H. 5. 2.

And the Lord Cook in his Reports, Li. 4. f. 43. b. 44. a. say

That

That an Arbitrement is no Plea when an Action is founded upon a Deed, when it is in the Realty, except in such Cases where Damages alone are to be recovered.

Note, Action Real claimeth Title of Freehold in Land.

Personal claimeth Debt, Goods or Damages.

Mixt claimeth not only a real thing, but Damages for the Wrong.

Chattels Real are such as belong not immediately to the person of a Man, but to some other thing by way of dependency, as a Box with Charters of Land, Apples on a Tree, or a Tree it self growing on the ground, or issuing out of some moveable thing, as a Lease or Rent.

Chattels personal belong immediately to the person of a Man, as a Bow, Horse, &c.

4. Also an Annuity is not arbitrable if the Submission be not by Specialty, that is, by Deed or Bond, wherein the Parties cove-

Nota, See Comwells Interp. tit. eisdem.

Annuity. 9 H. 6. 60. 14 H. 4. 18. 3 H. 4. 6.

nant or are bound to stand to the Award.

Freehold.

5. Nor a Freehold, 11 H. 4. 12. 14 H. 4. 18, 19. & 24 & 54 E. 3. 16. 12 Aff. pl. 25. 21 E. 3. 15.

Yet some hold that a Freehold may be awarded by Deed where the Submission is by Specialty. But 21 E. 3. 26. saith, An Arbitrement that the one Party shall have the Land out of the possession of the other, doth not give a Freehold.

Debt on Record.

4 H. 6. 17.

3 H. 4. 5.

6 H. 4. 9.

6. Nor Debt upon Arrerages of Account before Auditors, because such Debt is due by Record.

In a Controversie grounded upon a Matter of Record, Arbitrement shall not be regarded, 6 H. 4. 6. a. 8 H. 5. 3. b. 4 H. 6. 17. b.

Things not in *Rerum natura*.

West. Symb.
Par. 2. sect. 33.

7. And it seems, that such things as were not in *Rerum Natura* at the time of the Submission, (though they happen to be before the Award made) are not arbitrable, as if the Submission be of Ewe with Lamb, which after the Submission and before the Award made, have Lambs: It seemeth the Arbitrators have no power to make

make any Award touching the Lambs.

8. Matters concerning Criminal Matters Criminal Offences, as Treasons, Felonies, &c. touching the Crime, seem not to be arbitrable, for it is for the benefit of a Kingdom and Commonwealth that such Offenders be made known and punished. *West. Symb. Pars 2. sect. 33.*

9. Also Causes Matrimonial Causes Matrimonial seem not arbitrable, lest Men should separate those whom God hath joyned together. *West. ut supra.*

To conclude, generally, No General Rule. Chattels real or mixt, no Debts by Deed or Record, no Annuities, nor Freeholds are of themselves arbitrable.

Yet in such Cases though the things themselves be not arbitrable, yet if a Man will bind himself to stand to an Award, such Bond is good: And for the Non-performance of the Award the Bond will be forfeited.

C H A P. II.

Concerning the Submission, and the
Circumstances to be regarded there-
in.

Submission

what.

8 E. 4. 2.

West. Symb.

p. 2. sect. 1.

THE Submission or Compro-
mise is the Faculty or power
of pronouncing Sentence (between
Persons at Controversie) given to
Arbitrators by the Parties mutual
private Consent without publick
Authority.

Dyer 217. pl. 6.

4 Eliz.

General.

And every Submission is either
General, or Special.

General, as of all Quarrels,
Actions, Executions, Demands,
&c.

Special.

Special, as when 'tis only of
certain Matters, Facts and Things,
as of a Trespass, or all Actions of
Trespass, or of Debt or Detinue,
&c.

* Note, Upon

Submission by

Word only

there is no re-

Submissions are in two manners,
either by Writing or by Word. *

medy to enforce the Party to perform the Award; but an
Action on the Case for reciprocal promises will lie; and if
Mony be awarded an Action of Debt will lie, 5 E. 4. 7.
1 Keb. 600. 2 Keb. 238. 3 Keb. 64.

Those

Those that are by Writing are either by Obligation or by Covenant.

Which Obligation is either of Record, as a Recognizance, or by Deed between the Parties.

And this Submission by Writing Absolute and or by Word is either absolute or Conditional, as *so that*, or *provided that*, the Award be delivered

by a certain day or time, sealed or unsealed, indented, and the like; See after.

and in such Cases the Time, Manner and Matter must be exactly observed, or the Arbitrement will be void. 8 Co. f. 97, 98. Dyer f. 22.

But it is necessary, that every Compromise or Submission be made by Writing*, (with the Parties Covenants or Bonds to perform the Award that shall thereupon be made.) That thereby the Arbitrators may know their power, and the Parties how far they are subject to their Sentence.

And also lest their Labour and Judgment therein should be frustrated for want of means to compel the same to be executed.

* And convenient time and place therein limited for the yielding up of their Award to the Parties, &c. west. Sym. p. 2, sect. 34.

Countermand
Fitz. Arbit. 21.

21 H. 6. 30. a.

28 H. 6. 6. b.

5 E. 4. 3. b.

8 E. 4. 10. b.

12. a.

but not
discharge

28 H. 6. 6.

Finch 49 E. 3.

9. 49 E. 3.

Fitz. Arb. 22.

5 E. 4. 3. b.

8 E. 4. 11. b.

Submission by
Bond.

5 E. 4. 1.

21 H. 6. 30.

28 H. 6. 6.

49 E. 3. 9.

1. For it seems, That if the Submission be without Deed, either of the Parties may countermand, and discharge the Arbitrators without Deed, and shall lose nothing upon notice to the Arbitrators of such discharge; except there be divers persons concerned.

2. And if divers of one part and divers of the other part submit themselves to Arbitrement without Deed, one of them of the one part cannot discharge the Arbitrators without the other his Companions of the same party; for they were chosen by joynt Authority.

3. And if the Submission be by Deed, the Discharge must likewise be by Deed. And 'tis said, that in such Case one of the Parties alone cannot countermand the Arbitrators.

4. But if the Submission be by Bond (as most commonly it is, though by some not thought so convenient, for that thereby the Parties may hazard the Penalty of the Bond for a Trifle or small matter) though afterwards coun-

ter-

termanded, yet the Bond seemeth to be forfeited. And so says *Brook.*

tit. Arbit. 35. 5 E. 4. 1.

5. And so it is adjudged 8 Co. Bond forfeited

fol. 82. That though a Man be bound to stand to an Arbitrement, yet he may countermand the Arbitrators; but in this Case it was further resolved, that by the Countermand or Revocation of the power the Bond is forfeited, because he was bound to stand to the Award which he does not do when he discharges the Arbitrator.

Request.

2 Keb. p. 10.

Siderf. 281.

6. In an Action upon the Case on promise to perform an Award on Submission to *A. and B.* when their occasion will permit, *Keeling* conceived that only a convenient time was to be given, at least after Request, which *Twisden* and *Moreton* agreed, but *Windham* was contrary, and that they have time during their Lives, as if it had been to be made at their Wills and Pleasure. But if it be to be made generally without any time limited the Law implieth it must be done in convenient time. And it hath been

2 Keb. p. 20. been agreed by the Court, That though the Submission be when their Conveniences permit, yet after Request or convenient notice the Party may revoke on neglect by the Arbitrators.

**Bond forfeited
by Marriage.**

And it was said, that where a Woman sole submits by Bond to stand to Award, and before the Award marries, this is a Revocation of the Submission and Forfeiture of the Bond; but the Parties agreeing to enter into new Bond, it was adjourned, 2 Keb. 865, 877. 3 Leon. p. 9.

Notice.

But upon a Countermand there must be Notice given to the Arbitrators; for in pleading the Defendant may take Issue upon it, That he did not revoke or countermand, &c. And if there were no Notice it shall be found for the Defendant; but the Plaintiff need not aver an express Notice so he shew an implied one, 8 Co. 81, 82. 8 E. 4. 10. & 12.

C H A P. III.

Concerning the Parties to the Submission or Compromise; Persons chiefly regarded in Submission, are the striving Persons and the Arbitrators.

THE Persons striving be they, between whom the Controuersie dependeth, and which submit or compromit the same. Dyer 217.
4 Eliz.

And they must be two at the least, the Plaintiff and the Defendant, of which sometime there be two or more of a side or Party.

What Persons may submit to Arbitrement, and what not.

All Persons both Male and Female may submit to Arbitrement, except they be prohibited by Nature or by Law, What persons may submit.

As Infants, Madmen, Lunatics and Ideots, also such as are Dumb, Deaf or Blind by Nature, but if it be by Chance, and they can write and read, tis said they may Hindred by Nature.

may well by writing compromise or submit to Arbitriment.

18 E. 4. 2.
7 E. 4. 5.

And 'tis said that Infants are hindred to submit, but it seemeth to be meant by Deed, because their Covenants and Bonds are void; but otherwise 'tis said if an Infant submit himself to an Award, he shall be bound to perform it as well as a Man of full age. 13 H. 4. 12. a. 10 H. 6. 14. a. But this hath been adjudged since to the contrary, betwixt *Radson* and *Yates*, 15 Car. B. R. That the submission of an Infant to an Arbitriment was absolutely void.

Hindred by
Law.

As Women Covert without their Husbands, 2 H. 5. 9 E. 3. 28.

And persons civilly dead; as Monks, Fryers, Canons, professed Nuns, &c. 14 H. 8. 6. 2 R. 2. 5.

Compelled by
Threats.

So such as are compelled thereto by threats and imprisonment, 8 Aff. 25. 7 E. 4. 21. for in submission, the consent ought to be free.

Attainted.

Also such as are attainted of Felony or Treason, and persons Outlawed or waved in personal Actions,

Actions, for they have no Goods,
36 H. 6. 26. 16 H. 6. 47. 21 H. 7.
7. 8 E. 4. 4. 5 H. 7. 16.

So they that have joynt power **Joynt Power.**
with others, cannot singly submit
in relation to such power, with-
out their fellows. As, a Dean
without a Chapter, a Mayor
without his Commonalty, the Ma-
ster of a College or Hospital with-
out his Fellows; and so of other
Societies and Guilds, 21 E. 4. 13.

And generally it seemeth, that **General Rule.**
in Award such persons only may **West's Symb.**
of themselves submit, as may of **Part 2. Sect.**
themselves make good Grants. **20.**

If one of the Parties submit him- **Deputy.**
self to an Arbitrement on the one
part, and a Deputy on the other
part in the name of the other par- **4 Eliz. 217. 4.**
ty, the Arbitrement thereupon
made betwixt them seems to be
good.

The Husband may submit him- **Husband and**
self to an Award for himself and **Wife.**
his Wife, for the Chattels of which
he had disposition in right, and
by reason of his Wife, and it shall
bind his Wife, and upon such a **21 H. 7. 29. b.**
submission, Money awarded to be
paid

paid to him and his Wife is good,
Trim. 16 Car. in B. R.

Joynt Trespass-
 fers.

20 H. 6. 12. a.

7 H. 4. 31. b.
 20 H. 6. 12. a.
 and 41 a.

oynt and se-
 ceral.

2 R. 3. 18. b.

21 H. 7. 29. b.

Com. Daken

289. b.

Divers on each
 side submit.

22 Ed. 4. 29.

22 Ed. 4. 29.

22 Ed. 4. 29.

If divers on the one part have done a Wrong or Trespas to another, and he to whom the wrong is done and one of the others submit themselves to an Award, upon the Award made, the others not being Parties to the submission, shall have advantage in extinguishment of the Trespas.

If divers of the one part submit themselves to the Award of certain persons, and divers of the other part, the Arbitrators have power to make an Award for matters between them joyntly, and so for matters between them severally.

If divers of the one part and of the other part submit themselves to the Award of one, who makes an Award betwixt some of the one party and some of the other party, and not betwixt them all, and say not any thing in his Award concerning the others, yet such an Award is good, and *Kebles, pag. 886.* An Award between one of one side

side and one of another is sufficient, on a submission by several.

Note, if the submission be, that they will stand to the Award of the Arbitrators for the whole matters submitted or any parcel thereof.

CHAP. IV.

Concerning the Arbitrators and Umpire, and their Power, with several Presidents of submission.

A Rbiter signifies an Arbitrator or Umpire.

They are properly called Ar- Arbitrator, arbitrators who (having no power what. from the Law) are made choice of for Judges, by the consent of the Parties in Controversie to whom it is submitted, that their Sentence shall stand. *Johannes Paulus Lancelottus* in his Institutes of the Canon Law.

And by our Law Books an Arbitrator is described to be a private or extraordinary Judge, chosen by the Parties, to appease the debates

9 E. 4. 43. b.

16 E. 4. 9. a.

19 H. 6. 37. b.

8 E. 4. 10. a.

8 E. 4. 10 a: debates betwixt them, and to ar-
 19 H. 6. 37. a. bitrate and adjudge according to
 their good intent.

Why so cal-
 led.

Dyer. 536.
 19 El. 39.

His Power.

West Symb.
 Part 2. Sect.
 21.

Caution in
 choice of Ar-
 bitrators.

Skillful.

West *ibid.*
 Sect. 23, 26, 27.

Who because the Controversie
 is committed to his pleasure and
 arbitrement, is term'd an Arbitra-
 tor; and for that it is done by
 the mutual promise or compro-
 mise of the Parties, he is called
Compromissarius Judex.

His power is larger than the
 power of any ordinary or other
 extraordinary Judge; for an Ar-
 bitrator hath power to judge ac-
 cording to the compromise or
 submission after his own mind, as
 well of the Fact as of the Law, but
 the other Judges are tyed to a pre-
 script form, limited to them by
 the Law or Magistrate.

And since his power is so great
 and incontrollable, Men ought to
 be cautious how they make choice
 of Arbitrators; therefore it is
 thought fit that such persons be
 Elected as are sufficient and in-
 different.

That they have sufficient skill
 of the matter submitted to them
 and have neither legal nor natural
 Impediments.

That

That they be not Infants, who by reason of their few years may want discretion and knowledge.

That they be neither Mad nor Ideots, for such are void of Understanding.

That they be neither Deaf, Dumb or Blind, for thereby their principal Senses necessary for the apprehension of the Matter may be impaired.

Having their principal Senses.

As for indifferency, That they be void of Malice and Favour to either of the parties, that they be not notorious by Outlawry, Excommunicated, Irreligious, nor Covetous, for though he hath absolute power, yet his Judgment or Sentence ought to be sincere and incorrupt, according to right and equity, without malice, flattery, and every other vicious affection or perturbation, which may in any sort lead him awry from the right Path of Justice and Equity, *West Symb. Part 2. Sect. 27.* These are thought to be fit Qualities, though the Law prescribes no Rules herein.

Indifferent persons without Malice, &c.

Ha-

Having shewn what persons are most fit to be Elected Arbitrators, we will proceed, respecting in the Arbitrator these three things.

1. His Ordinance, from whom it is.

2. His Authority, what it is.

3. His Duty, wherein it consists.

20 H. 6. 41 a.

8 E. 4. 19 a.

Touching his Ordinance, he is Ordained by these two things, viz. by the Election of the Parties, and by his own undertaking of the charge.

19 H. 6. 37.

8 E. 4. f. 1.

and 9.

9 E. 4. 43. b.

16 E. 4. 9. a.

Touching his Authority, what it is; it is derived from the submission, and extendeth no farther, and thereby he is Judge between the Parties, and therefore he cannot transfer his Authority over to any other.

Touching his Duty, it consisteth in three things. First, to hear the grief of the Party. Secondly, to judge according to Equity. Thirdly to give notice of his Award.

Of the two first Branches enough hath been said before, only it remaineth to set down some

Forms

The Law of Arbitrement.

21

Forms and Presidents of Election and Submission in Writing, which are the best and most in use.

Presidents.

The Form of a Submission or Compromise by way of Covenants.

THIS Indenture made the 1st day of Aug. in the fourth year of the Reign of our Sovereign Lord and Lady William and Mary by the Grace of God of England, Scotland, France and Ireland King and Queen, Defenders of the Faith, &c. Annoque Domini, 1692. between A. B. of, &c. of the one part, and C. D. of, &c. of the other part, Witnesseth, That the said A. B. and C. D. do by these Presents willingly compromise and submit themselves, and either of them, to the Award, Arbitrement, Order, Determination, final End and Judgment of E. F. of, &c. and G. H. of, &c. Arbitrators indifferently chosen, elected

Compromit, that is, do mutually promise.

Exceptions.

elected and named, as well by the
 said *A. B.* as the said *C. D.* to arbitrate, award, order, judge and determine of, for, upon or concerning all and all manner of Action and Actions, Cause and Causes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespases, Damages and Demands whatsoever at any time heretofore had made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending by and between the said Parties [Here if you have any Exceptions you may enter them, as, Except one Action of Debt depending between the said Parties in their Majesties Court of Kings Bench, and except one Debt of 10 *l.* due to the said *A. B.* by the said *C. D.* for the Price of certain Corn, &c. And except all Lands and Tenements of the said *A. B.* &c. And such like Exceptions] So always as the said Award, Arbitrement, Order, Determination, final End and Judgment of the said Arbitrators

trators of, for or upon the Premises be made and given up in Writing * under their Hands and Seals, ready to be delivered to the said Parties or such of them as shall come and require the same on or before the day of next ensuing the date of these Presents at or in the Dwelling-House of in aforesaid, and so always that the said Arbitrators do not by the said Award, order or appoint any Act or Acts, Thing or Things to be done or performed by or to any person or persons, other than to or by the said Parties to these Presents their Heirs, Executors, Administrators or Assigns or some of them, and not to or by any Stranger or Strangers to this present Submission. And the said *A. B. C. D.* and either of them, for themselves, their Heirs, Executors and Administrators, and the Heirs, Executors and Administrators of either of them do by these Presents mutually covenant, conclude, promise and

* Note, you may say by Writing indented under both their Hands and Seals, and one part thereof delivered or caused to be delivered by the said Arbitrators to the said *A. B.* or his certain Attorney in that behalf requiring the same on the — day of — at or in the Dwelling-house of — in the said County of — and the other part of the said Award be likewise delivered or caused to be delivered to the said *C. D.*

or his certain Attorney in that behalf, requiring the same at the said day and place, &c.

agree,

Note, You may make it so as that the Arbitrators shall give notice to the Parties of their Award.

And that it shall be delivered to both Parties.

agree, to and with the other his Executors and Administrators, and every of them, that neither they nor either of them will at any time hereafter revoke the Authority hereby given to the said Arbitrators, nor discharge them nor either of them of the said faculty or power of Arbitration. And that they and either of them, and the Heirs; Executors; Administrators and Assigns of either of them on their several parts shall and will well and truly observe, perform, fulfil and keep all and every Clause, Sentence, Article, Submission and Agreement in these Presents mentioned on his or their part to be performed and kept according to the tenor, true intent and meaning of the same. In Witness whereof the said Parties to this present Submission have interchangeably set their Hands and Seals the day and year first above written.

Sealed and delivered in the presence of

Note

Note, This and such like are said to be Submissions Conditional, because of the Words *So always that the said Award, &c. be made in Writing, &c.* And *So always that the Arbitrators do not order any thing to be done by a Stranger,* and the like.

And in this Case the Award must be made of all things according to the Submission, because the Parties submit only on those Terms. And if the Arbitrators award contrary, it will avoid the whole Award, as you may observe by the Books cited hereafter.

Note, it is said, That if the Submission be, that the Parties will stand to the Award of the Arbitrators for the whole Matter submitted, or any parcel thereof, then the Award may be made for parcel, 39 H. 6. 11.

A single Bond of Arbitration of
all Actions without Exceptions
and without an Umpire.

Noverint universi per præsentes
me A. B. de C. in Com. D.
Gen. teneri & firmiter obligari E. F.
de C. prædict. Gen' in viginti li-
bris bonæ & legalis monetæ Angliæ
Solvend. eidem E. F. aut suo certo
Attornato, Executoribus vel Assign.
suis, Ad quam quidem solation' bene
& fideliter faciend' obligo me, Hæ-
redes, Executores & Administrato-
res meos firmiter per præsentes si-
gillo meo sigillat' dat. primo die
Augusti Anno Regni Domini nostr'
Willielmi & Domina Mariæ Dei
gratia Angliæ, Scotiæ, Franciæ &
Hiberniæ Regis & Regina Fidei
Defensor', &c. quarto Annoque Do-
mini, 1692.

Or in English thus :

KNow all Men by these Pre-
sents, That I A. B. of C. in
the County of D. Gent. am held
and firmly bound unto E. F. of
C.

C. aforesaid Gent. in Twenty Pounds of good and lawful Mony of *England*, to be paid to the said *E. F.* or his certain Attorney, his Executors, Administrators or Assigns, to which Payment well and truly to be made I bind my self, my Heirs, Executors and Administrators firmly by these Presents, sealed with my Seal, dated the first day of *August* in the fourth year of the Reign of our Sovereign Lord and Lady *William and Mary* by the Grace of God of *England, Scotland, France and Ireland* King and Queen Defenders of the Faith, &c. *Annoque Domini*, &c. 1692.

Note, You may make the penalty as you think fit, according to the Circumstances submitted, but it ought to be reasonable.

The Condition of this Obligation is such, That if the above bounden *A. B.* his Heirs, Executors and Administrators for his and their parts and behalves shall and do in all things well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Order, Arbitrement, Judgment, final End and Determination of *G. H.* and *J. K.* both of *C.*

Nota.

aforesaid in the said County of D. Gent. [Or otherwise, naming the Arbitrators, their places and Additions] Arbitrators indifferently chosen, elected and named, as well on the part and behalf of the above bounden *A. B.* as of the above named *E. F.* to arbitrate, award, order, judge and determine of, for, upon and concerning all and all manner of Actions and Actions, Cause and Causes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, at any time heretofore had made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending by or between the said Parties, so always as the said Award, Arbitrement, Order, Determination, final End and Judgment of the said Arbitrators, of, for or upon the Premises be made and given up in Writing indented under their Hands and Seals ready to be delivered to the said Parties in difference (or such of them as shall

shall desire the same) on or before the first day of *Sept.* next ensuing the date above written [Or otherwise as the day agreed on will be] Then this Obligation to be void and of none effect, or else to stand and remain in full force and virtue. *Nota.*

Sealed and delivered
in the presence of

Note, This may properly be called a Conditional Submission general by Bond.

And note, That each Party must give a Bond unto the other, Word for Word only changing their Names as occasion requires.

A Bond of Arbitration without Exceptions, from two to two, and without an Umpire.

Noverint universi per presentes You must
nos A. B. de C. in Com. D. name the Parties, their
Gen. & E. F. de C. prædict. in Places and
Com. prædict. Gen. teneri & firmiter Additions
right.

C 3

* Note, If the Bond be to three you say, seu eorum aliqui.

† If three be bound you say, obligamus nos & quemlibet nostrum.

‖ If three be bound you say, cujusbet nostrum.

ter obligari G. H. de C. prædict. in Com. prædict. Yeoman, & J. K. de C. prædict. in Com. prædict. Yeoman, in centum libris bonæ & legalis monete Angliæ solvend. eisdem G. H. & J. K. seu eorum alteri * vel eorum certo Attornato Executoribus, Administratoribus vel Agentibus signatis suis. Ad quam quidem solutionem bene & fideliter faciendam obligamus nos & † utrumque nostrum per se pro toto & in solido Heredes Executores & Administratores nostri & ‖ utriusque nostrum firmiter presentes sigillis nostris sigillat. dat. primo die Augusti Anno Regni Domini Willielmi & Domine Mariæ Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis & Regine Fidei Defensor, &c. quarto Annoque Domini 1692.

Or thus in English.

Note, You must name the Parties, their places, and Additions right.

K Now all Men by these Presents, That we A. B. of C. in the County of D. Gent. and E. F. of C. aforesaid in the County aforesaid Gent. are held and firmly bound to G. H. of C. aforesaid

in the County aforesaid, Yeoman, and J. K. of C. aforesaid in the County aforesaid Yeoman, in one hundred pounds of good and lawful Mony of *England* to be paid to them the said G. H. and J. K.

or to one * of them or their certain Attorney, their Executors, Administrators or Assigns: To which payment well and truly to be made, we bind our selves and † each of us by himself for the whole entirely, our Heirs, Executors and Administrators, and the Heirs, Executors and Administrators of || each of us firmly by these Presents, sealed with our Seals, dated the first day of *August* in the fourth year of the Reign (&c. as before in the other Bond.)

* Note, When a Bond is made to three you say, or to any of them.

† Note, When a Bond is from three, you say, and every of us.

|| When three are bound, you say, of every of us.

Note, You must not date a Bond of any day that is not come, though if you happen to date it of a day that is past it may serve.

The Law of Arbitrement.

The Condition of this Obligation is such, That if the above bounden *A. B.* and *E. F.* their Heirs, Executors and Administrators, for their and every of their parts and behalves shall and do in all things well and truly stand to, obey (&c. as in the other Condition till you come to) Arbitrators indifferently named as well on the part and behalf of the above bounden *A. B.* and *E. F.* as of the above named *G. H.* and *J. K.* to arbitrate, award, order, judge, (&c. as in the other till you come to) by or between the said Parties or any of them, So always as the said Award, &c. as before in the other.

Sealed and delivered
in the presence of

Note, you may put Exceptions in these Conditions as well as in Covenants.

The

The Condition of a Bond of Arbitration, with an Umpire certain, nominated therein.

THE Condition of this Obligation is such, That if the above-bounden *A. B. &c.* as in the others, till you come to — ready to be delivered to the said Parties in difference, or such of them as shall desire the same, in or before the first day of *Sept.* next ensuing the date above-written. And if the said Arbitrators shall not make and give up their Award and Arbitrement, of and upon the Premises, on or before the said first day of *September*, if then the said *A. B.* his Executors, Administrators, and every of them do and shall stand to.

Note, the Bond is as before.

If the Submission be concerning a Title of Land, Mr. *West* in his *Symb.* part 2. sect. 40. advises to word it thus :

As well of, for and concerning the Right, Title, Interest, Use,

C 5

Pos

Possession and demand, of and in the Manor of S. with the Appurtenances in S. in the said County of Y. and all Lands, Tenements, and Hereditaments, with the Appurtenances in S. aforesaid in the Occupation of the said A.B. and his Assigns, as of and upon all Actions, Trespasses, Suits, Quarrels, Debts, Duties, Debates, Grievs, Inconveniencies and Demands, had moved, stirred or depending between the said Parties, concerning the said Manor, Tenements and Premisses, or any part thereof; and also if the said A.B. before the * Feast of P. now next coming, do shew unto the said Arbitrators all such Writings as he hath concerning the said Manor and Premisses, at such time and place as the said Arbitrators shall appoint for the sight thereof, — So always That, (*&c.* as in others) That then *&c.* as before, in others.

* Or such other time as may be thought convenient.

And Note, such a submission as this may properly be called a special Conditional Submission.

And though the Title of Land is

is (as aforesaid) of it self not Arbitrable, and therefore an Award pleaded in such case no Bar, yet being by Bond, in this case the Bond will be forfeited for not performing the Award.

C H A P. V.

The Duty of the Parties after Submission, and concerning publishing the Award, Notice and Delivery.

THE Election and Submission being thus made.

In the next place it is the Duty of the Parties to come before the Arbitrators, and to shew their Grievances, and the Arbitrators ought to hear them, and to judge accordingly, or otherwise they are no good Judges.

Parties to shew their Grievances.
8 E. 4. 10. 4.
Arbitrators must hear them.

The Arbitrators having heard their Grievances and Matters, and agreed upon their Award, the third part of the Duty of an Arbitrator is the publishing or notifying of his Award.

Award agreed upon.

And

Award to be
published, or
notice there-
of given.

And it is to be considered ,
That the publishing or notifying
of an Award is either provided
for and ordained by the submissi-
on it self, Or else it is left and
permitted to the discretion of the
Arbitrator.

If it be so
provided by
submission.

If it be provided for by the
submission, as sometime it is and
may be , that the same Award
made be notified by the Arbitra-
tors to the parties or some of them,
&c. and that either by a certain
day or time, or else without limi-
tation of any time.

Else it is no
Arbitrement.
8 E. 4. 21. b.

Then in such case its said Ar-
bitrement is no Arbitrement be-
fore it be pronounced.

Delivery of
the Award.
8 E. 4. 11.
8 E. 4. 21. a.
1 H. 7. 5. a.
27 H. 8. 46.

Also, where by the submission it
is appointed or conditionally pro-
vided, that the Award shall be de-
livered to the Parties, &c. it is
then no Arbitrement in Law be-
fore it be delivered in Deed.

Where the
Parties must
take notice at
their Peril,

But if the submission be, That
the Award shall be delivered to
the Parties, (&c.) before such
a day, requiring the same, and
no certain day, limited when it
ought to be delivered, then the
Parties

Parties are obliged to take notice of the Award at their peril. 8 E. 4. 1, 8, 10, 13, 21, &c.

If divers of the one party, and divers of the other part submit themselves to the Arbitrement of another, provided that he shall deliver to the Parties or one of them, the Arbitrator is not obliged to deliver it to two of one Party, or to one of each Party, but 'tis sufficient to deliver it to any of the said Parties. How to be delivered when divers are concerned. 4, 5 El. 218. b. 5.

If the submission be, That the Arbitrement shall be delivered before such a day, it may as well be delivered by Word as by Deed; if the submission be not, that it shall be delivered by Deed or By Deed. Writing. Delivered by word. 5 El. 218. b. 5.

If the submission be that the Arbitrement shall be delivered, it may be made in one County and delivered in another County. 5 H 7. 7. a.

If the submission be by Deed, and the time past in which the Arbitrement ought to be made, the parties cannot prorogue the time over to make the Award, without a new submission to that purpose; and whatsoever the Arbitrators Day past, and new submission. 49 E. 3. 9. 4.

Void Award. Arbitrators do award after the time appointed, is void.
8 H 6. f. 18.

Time prorogued. But if the submission be without Deed, the Parties may prorogue the time which was given to make the Award.
49 E. 3. 9.
Fitz. Agard 22.

Arbitrators cannot make two Awards. If the Arbitrators make their Award between the Parties one day, and give their judgment therein, they cannot make another Award between the Parties another day, albeit the time given by the submission is not expired.
22 H 6. 52. a.
33 H. 6. 28. b.

Or by parcel. An Arbitrement cannot be made part at one time and part at another, albeit it be within the time of submission.
39 H. 6. 12. a.

Note, this is meant where it is declared or pronounced to the Parties by pieces or parcels.
8 E. 4. 10. b.
19. E. 4. 1. d.
3 H. 4. 1. b.

But may have several Discourses. But the Arbitrators may discourse betwixt themselves, and agree upon one thing one day, and of another thing another day, and in the end make one intire Award of the whole, and it is good.
47 E. 3. 21 a.
39 H 6. 12 a.

Time expired before Agreement. If the Arbitrators Award one thing on one part, and before they can agree of their Award for

ime for the remainder, the time given
by the submission expire, their 39 H. 6. 12. a.
with whole Award is void.

pro- Lastly, where by the submission
ven there is no order taken for the Notice in Con-
their delivery or publication of the science to be
one Award, then in honesty and con- 8 E. 4. 10. a.
ent science the Arbitrator is obliged 8 E. 4. 2. a.
no- to make notice to the Parties of and b.
it.

ties But in rigour of Law the Ar- But not in ri-
ren bitrement it self is intended to be gour of Law.
d. a thing known. 8 E. 4. 1. b.
be 21. b.

art And therefore the Parties to 8 E. 4. 1. 8.
he the Arbitrement are bound to take 21.
is notice of it at their Peril, espe- 18 E. 4. 18. a.
he cially if they be bound to stand 1 H. 7. 5. a.

if- Although the Parties are not Notice of one
nd to have notice given them of the act depending
y, Arbitrement, yet if the Arbitrators on another.
er award that one of the Parties 8 E. 4. 21. b.
ne shall do an act which depends 20 E. 4. 8. b.
d upon another first to be done of
the other Party, he shall have
notice of it.

ne But now all submissions are General Rule:
e usually by Bond, conditionally,
d so as the Award be made in Wri-
or ting, and ready to be delivered
to

The Law of Arbitrement.

to the Parties or such of them as shall require the same, &c. and in this case it is clearly resolved and agreed, That the Parties having so bound themselves are obliged to take notice of the Award at their peril, 18 Ed. 4. 18 a. 4 Coke 82. 8 Coke f. 9, 92.

C H A P. VI.

What things are chiefly to be regarded in Arbitrements or Awards; and first, that it must be according to the submission.

HAVING now received the Award from the Arbitrators; Next we come to examine the Arbitrements themselves, and to see what things are chiefly to be regarded in them.

Six things to be regarded in every Arbitrement.

In the form of every Arbitrement six things are specially to be regarded,

1. That it be made according to the very submission touching, the

the things submitted, or necessarily depending thereupon, and every other circumstance, as aforesaid.

2. That it ought to be certain.

3. That it ought to be equal, and appoint either Party to give or do unto the other something beneficial in the appearance at the least.

4. That the performance thereof be possible and lawful, and within the power of the Parties.

5. That there be a means how either Party may by Law attain unto that which is thereby awarded unto him.

6. That it be a final end of the Controversies submitted: And if it fail in any of these points, then it is said the whole Arbitrement shall be void.

First, That it be made according to the submission.

An Arbitrement which is made of a matter not contained in the submission is void, as followeth,

7 H. 6. 40. b.
19 H. 6. 36. b.
9 E. 4. 44. a.
19 E. 4. 1. a.
It 7, 8 El. 4. 4. a.

Void in three
respects.

It may be void as to the sub-
mission in three respects,

1. Of the Persons submitting
&c.

2. Of the things or matters
submitted.

3. Of the circumstances of the
submission.

As to do an
act to a Stran-
ger.

17 E. 4. 23.

19 E. 4. 1. b.

5 H. 7. 22. b.

First, As to the Persons.

If the Arbitrators award that
one of the Parties shall do an act
to a Stranger, as make a Feof-
ment or the like, such Arbitrement
is said to be void, 8 E. 4. 1. 9
22 H. 6. 46. b.

But see after Chapter 13. where
'tis said otherwise.

Act to be
done by a
Stranger.

So if it Award a thing to be
done by a Stranger, it is also
void as to the Stranger, *Mich.* 28
and 29 *El.* *Moor* and *Bedel's Case*
See the General Rules after.

To stand to
the Award of
a Stranger to
be made.

If the Arbitrement be that the
Parties shall stand to the Award
of the Stranger, it is void, for
power cannot be assigned. 47 E. 3.
21. a. 8 E. 4. 10, 11. a. 19.
Coke, *Samons Case*.

But if a Stranger had made

an Arbitrement before between the said Parties, an Award to stand to such an Arbitrement of the Stranger, its said is good. 39 H. 6. 10. To stand to Award of Stranger formerly made.

And this may be, because the former Arbitrement is a thing already done and certain.

If the Arbitrement be, That the Parties shall perform the Award of another formerly made between the said Parties; whereas in truth there is no such Award, yet the Arbitrement is good (*prima facie*) at first sight, until it be known that there be no such Award, 39 H. 6. 12. a. Award supposed to be formerly made.

If an Arbitment be that an act limited by the Award shall be done by the advice and counsel of another, such an Award hath been thought to be good, but by others ill, because not final, and incertain whether the Counsel will advise. Act to be done by advice of Counsel.

But if the act be to be done by the advice of the Arbitrator himself, this is to make two Awards, and so void, 8 E. 4. 11. a. 14 E. 4. 1. 18 E. 4. 22/23. 19 E. 4. 1. a. By advice of the Arbitrator.
See

The Law of Arbitrement.

See after *Chap. 13.* Concerning Payment in the House of a Stranger : Concerning Payment at the House of a Stranger : Concerning Payment at or in the House of a Stranger.

2dly. As to the things.

Submission of one thing.
Award of another.

It one be chosen to make an Award upon one thing, and he makes it upon another, the Arbitrement is void : As if the Submission be of all things in variance betwixt the Parties ; and the Award is of things not in variance, *Pl. Com. 396. a.*

Submission concerning Title ; Award concerning profits only.
Submission of the Manor of D. Award of Manor of S.
Submission of all Causes till that time ; Release after of all Causes to that time.

So if the Submission be of the Right and Interest of Land, and the Award is concerning the Profits only of the Land, *Dyer f. 242.*

So if the Submission be of the Manor of D. and the Award is of the Manor of S.

So if the Submission be of all Causes till that time, and the Award is of a Release of all Causes to the time of the Award, especially if any new Causes be shewn.

But



But if the Award be made of 8 Co. fol. 98. and concerning the Premisses, and that such a day to come, the one party shall pay the other 10 l. and that the party shall make general Releases; this Release *Nota.* shall be supposed only of the Causes submitted.

But if the Submission be of a Thing, the Award may be made of a thing incident or accessory, as if it be of Title and Possession of Land, the Award may be made also of the Evidences and Charters concerning the Land, *Mich. 9 Jac. Tiderby and Tiderby.*

Note also that it is said, That if the Submission is of things personal, the Arbitrators may award, That one of the Parties shall do an act which is of a thing real in satisfaction of a personal Wrong. Also

If the Submission be of a thing real, the Arbitrator may award Satisfaction to be made of a thing personal, 9 E. 4. 44.

General Rules.

The Award
for more than
is submitted.

Acts to be
done by a
Stranger.

Award of less
things than
submitted.

Submission of
Actions real
and personal,
Award only of
personal.

Arbitrator
may make an
Award of one
thing only, if
he have no-
rice of no
more.

Where an Award is made for more than is submitted, it is good for that part which is submitted, and void for the residue.

So where the Award is, That the Parties shall do such Acts, and a Stranger such Acts, the Award may be good as to the Parties tho' void as to the Stranger, *Mich. 29 Eliz. More and Bedel. 14 H. 8. Lee's Case.*

And in some Cases where the Award is of less things than were submitted it will be void, as where two or three things are put in Arbitrement joyntly, and an Award is made of part and not of the whole, *39 H. 6. 9.*

But if the Submission be of all Actions real and personal, and an Award is made of all Actions personal only, this hath been adjudged to be good, *19 H. 6.*

And it hath also been adjudged that though there are many matters in Controversie, yet if one only be shewn to the Arbitrator, he may make an Award of this, for the Arbitrator is a Stranger to the particulars, and the Parties, who

who are Privy, ought to shew the Causes of their Controversie to him, or otherwise most Arbitrements might be avoided by the Parties concealment, 8 Co. f. 98.

Where a Submission is without Deed, an Award may be made of part of the things only, and good, so it be with Deed, and the Submission either general or special, and not conditional.

Submission without Deed and Award only of part.

But where the Submission is either general or special by Deed conditional, with the Words, *Provided that,* or, *So as the said Award concerning the Premisses be made in Writing, &c. and delivered by such a time, &c.* In such Case the Award must be made of all the Matters submitted, 8 Co. f. 98. Dyer 216, 242.

Submission by Deed conditional.

Award must be of all Matters.

And note, That where a Man in pleading an Award made upon a general Submission conditional, says the same was made of and concerning the Premisses, and shews only one Matter (among many) to be awarded, this shall be good and intended an Award of all Causes submitted, until the contrary

Pleading an Award upon a general Submission conditional. 8 Co. 98.

Pleading an
Award upon
Special Sub-
mission condi-
tional.

trary be shewn, and he is not ob-
liged to aver that is all.

But it is otherwise in Pleading
an Award made upon a special
Conditional Submission, for there
the Award must be expressly al-
leged to be made of all things
or otherwise it is naught, because
in a special Submission condition-
al the Causes are apparently set
forth.

See Dyer 216.

So upon the general Submission
Conditional, when other Causes
are shewn than were pleaded, the
Award will be void, because that it
was Conditional.

3ly. Circumstances.

Delivery un-
der Hand and
Seal.

An Award may be void in re-
spect of the Circumstances of the
Submission, as where the Submis-
sion is, That the Award be de-
livered in Writing under their
Hands and Seals; and the party
pleads a Delivery, but says not
under their Hands and Seals, it
shall be supposed to be no Arbit-
rement according to the Submis-
sion, and therefore no Cause of
Action.

For

For upon these Submissions conditional, as to writing, sealing and delivery, &c. all the Circumstances must be observed, and awarded of, at or before the day appointed, otherwise all is void, *Dyer* 243. 21 H.8. 42. 8 E. 4. 11. 8 H.6. 18. 4 Co. 103.

All Circumstances to be observed.

General Rules.

Again observe, That where an Award is of one single Matter only, or of many, and all out of the Submission, such Award is totally void.

An Award of all things awarded out of the Submission

So where the Award is of one single Matter only, or of many, and all within the Submission; yet if it be not of all Matters submitted, or not agreeing in Circumstances: Where the Submission is by Specialty conditional, in such Case also the Award will be totally void.

Of all things awarded within the Submission, but not agreeing, &c.

But where an Award, is of one thing only, or of several things, part within the Submission and part out, there the Award is void only as to that which is out, and good for the Remainder.

Award of things part within the Submission, and part out.

D

Yet

Award void
on one part is
void on both.

Yet though it may be void in part and good in part, it cannot be totally void only as to one of the Parties and good against the other, for if it be void against one it is void against both: An Arbitrement ought to be of both sides, and equally binding, 22 H. 6. 46. 36 H. 6. 1. 17 E. 4. 5. 18 E. 4. 1. 21 E. 4. 75. 17 H. 7. 43. & 45. 5 Co. 77. 8 Co. 98. 10 Co. 31.

Submission by
Promise.

And the Law is held the same as to these things where the Parties are tyed by Promise only.

Upon an Award totally
void, Bond
not forfeited.

Now where an Award is totally void, there a Bond can never be forfeited for the Non-performance of it; for such an Award is as if no Award, and the Law requires not the Observation of that which is void, 10 Co. 31. Keil. 175.

Upon an Award void in
part only,
Bond forfeited.

Again, where the Award is void in part only, there the Bond may be forfeited for not observing the Award, especially for that which is contained in the Submission though not for that which is out and therefore if the Breach be assigned in that part which is void

the Action will not lie. But a Breach may be assigned for that which is within the Submission, and the Bond will be forfeited for the Non-performance of it, 18 E. 4. 22, 23. 41, 42 Eliz. in C. B. Mich. 17 H. 7. 42, 43. 7 Jac. in B. R. Lawrence versus Carr, 10 Co. 131.

CHAP. VII.

That an Award ought to be certain.

IF the Arbitrators award that one of the Parties shall enter into a Bond to the other, and doth not award in what time, such Award is void for the Uncertainty, 5 Co, 77, 78.

And where an Award is of things within the Submission, and is uncertain in any part that concerns a Party to the Submission, it is void in the whole, 8 E. 4. 1. Hill. 15 Car. in B. R.

Yet a small Variation is not material; as if the Award be that one of the Parties shall discharge the other of a Bond of the Penalty

Bond awarded and no Sum mentioned.

Award void in part, void in the whole.

A small Variation not minded.

The Law of Arbitrement.

of 100 l. or thereabouts, this was held a sufficient Certainty, *Pasch. 15. Car. in B. R.*

Award good
if it may be
reduced to a
certainty.

Also an Award that is seemingly uncertain, and yet may be reduced to a Certainty is good enough, as that the Defendant shall pay so much during the continuance of such a Lease, naming it, &c. Here the payment of the Mony is referred to the Continuance of the Lease which is certain, and therefore the Award good, *Pasch. 5 Jac. in B. R. Girling versus Gosnold, Hob. 68. Dyer 242.*

C H A P. VIII.

That an Award must be equal, and appoint either Party something beneficial.

General Rule.

AN Award ought to be equal, that is, mutually satisfactory, and appoint either Party to give or do unto the other something beneficial in the appearance at the least.

An

The Law of Arbitrement.

53

An Arbitrement is no Plea in Trespass, if nothing be awarded to the Plaintiff for amends, *Nothing for amends in Trespass, ill.*
43 E. 3. 28.

In Trespass of Goods taken, it is not good Pleading an Award, that the Defendant should retain part of the Goods and the Plaintiff have the rest.

So in Debt, to plead an Award that the Plaintiff should have one Moiety, and the Defendant the other, or should pay part and keep part, this is no Plea, 17 E. 3. 6.

45 E. 3. 16. 10 H. 4. Fitz. Arbit. 19. and therefore such an Award is void, and with good reason. For

In Trespass for taking away of Goods, the Defendant pleaded an Award, that because the Defendant had taken away the Plaintiffs Goods, he should therefore carry and redeliver them to the Plaintiff, which he had done, this was held naught; for redelivery of the Plaintiffs own Goods could be no satisfaction, much less the redelivery of part of them, 45 E. 3. 16. 2 H. 5. 2. a. 12 H. 7. 14, 15.

Half to the one, half to the other, ill.

Goods awarded to be redelivered, ill.

D 3

But

If benefit to
him for whom
delivered,
good.

But if upon the Delivery of Goods, he for whom they are to be delivered may have any benefit by such Delivery in satisfaction of the Wrong, then the Arbitrement is good, 2 H. 5. 20. 14 H. 4. 14. b. 12 H. 7. 15. a. As if the Defendant had been awarded to have carried the Goods to such a place for the Plaintiffs benefit.

Award on one
side only.

If two submit themselves to Arbitrement of all Trespasses, &c. between them, and it is awarded that the one shall make amends to the other, and nothing is awarded for the others Benefit, this Award is void being but on one side, 7 H. 6. 40. 39 H. 6. 9. 22 E. 4. 25.

One quit a-
gainst the o-
ther.

So if it were that the one only shall go quit against the other, 19 H. 6. 36. 20 H. 6. 18, 19. Hob. 68. For such Arbitrements are only on one side.

Nota.
General Rule.

But where there is an Acquittal or exprefs Satisfaction on both sides, or on one side only with an implied discharge on the other, the Award may in such case be good.

An

An Award that the one shall give to the other a Quart of Wine, or some such small Recompence in satisfaction of the Wrong, is good. A small recompence and good.

So, for that the one has done more Trespas to the other than the other to him, he shall pay the other a Peny in satisfaction, and that he shall be quit against him, 19 H. 6. 37. 29 H. 6. 18, 19. 45 E. 3. 16. b. 9 E. 4. 44. a. A Peny in satisfaction, good.

An Award for that the Wrongs done by the Parties each to other are equal, they shall therefore be quit each against the other is said to be good, 20 H. 6. 19. 21 H. 6. 9. Dyer 356. 22 H. 6. 39. 19 H. 7. 37. Each party quit against the other.

Yet 'tis said to be otherwise, if the Submission was by Word of Mouth, 9 E. 4. 8. *Quare.*

Where divers of the one Party and the other submit themselves to Award, and the Arbitrement is, That one of one of the Parties shall pay to one other of the other Party so much, without saying any thing of the others, it is said to be a good Award, for that the others, it may be, have no One of each party quit against the other.

Damage of things uncertain lies in the direction of the Arbitrators.

Cause to have any thing, 22 E. 4. 25. b.

If the Arbitrement be that one of the Parties shall pay a greater Sum in value than the Wrong which he has done requires, as 10 l. where but 5 s. damage, and the like; yet the Award is said to be good, for that it lies in the discretion of the Arbitrators, who are Judges, especially of things uncertain, as Trespass, and the like; but of things certain, as Debt, &c. (as before) it may be otherwise, 8 E. 4. 121.

Nota.

Implied Discharge good.

Again as to an implied Discharge,

If it be awarded, That the Defendant shall pay 10 l. for a Trespass, it is good, 22 E. 4. 25.

So that the Defendant shall pay a Penny to the Plaintiff in satisfaction of all manner of Actions, if the Defendant shew that he hath paid it, it is a good Bar, 22 H. 6. 39. Because these imply a Discharge to the Defendant.

No Discharge on Bond without Acquittance.

But if the Award be that he that is bound in a Bond shall pay the Debt, this does not imply a Dis-

Discharge; for payment in such Case without Acquittance is no Discharge to him, *Hob.* 68. and therefore the Award void, unless there be provision for a Discharge, See 8 Co. 98.

An Award that in satisfaction Intermarriage, of the Wrong the Parties shall 9 E. 4. 44. intermarry, is no good Award, for it is no satisfaction.

That one of the Parties that is The Parties to in Arrear in Accompt, shall account with the other, is held no account. Satisfaction, 30 H. 6. *Fitz. Abr.* 27.

C H A P. IX.

That the Performance of an Award must be possible, lawful, and within the Parties Power, without the Aid of others.

IF an Award be to do a thing impossible, as to turn the River of *Thames* to run over the Cellar of *Westminster* within a day, or to pay a Sum of Mony at a day already past, or to release all Right

Award of a thing impossible.

8 E. 4. 6. 10.

& 12.

9 H. 6. 19.

22 H. 6. 46.

D 5

in

21 E. 4. 38,
39, 48.

in such a Manor, where in truth there is no such, and the like; such an Award is void, and the Bond not forfeited.

General Rule.
Award of a
thing possible
must be per-
formed.

But if the Thing seem feasible and possible though very hard and difficult, yet the Award may be good, and the Party ought to perform it. *As,*

Example.

That I shall at such a time, go to such a place, and bring from thence, such a thing as is not there; in this case I ought to buy the thing and convey it to the place, and bring it from thence, &c. 9 H. 7. 15.

Example.

If the Award be that I shall pay 1000 l. within an hour, &c. I am bound to do it, 8 E. 4. 1. though perhaps I have not 10 l. 19 E. 4. 4. and so of the like.

**Award to do a
thing expressly
against Law.**

Again, an Award ought to be lawful, therefore that which is unlawful is void. Many things in general acceptation are against Law because they do not agree with Law, but in this place it is meant of things which are expressly forbidden by the Law, as if it be awarded that the Defendant shall

shall kill, rob, steal, forge a Deed,
or the like, *Coke on Lit.* 206. b.
42 E. 3. 6. 2 H. 4. 9. 19 H. 6. 55.

Again, the performance ought General Rule.
to be within the Parties power,
without the Aid of others.

If the Award be that I shall Award to do
make a Stranger pay 20 l. to the a thing out of
Plaintiff, it is void, for I cannot my power.
force him to do it, 8 E. 4. f. 2.
22 H. 6. 46.

So if it be that I shall pay 40 l. Award to do
thus, 10 in hand, and three seve- a thing at the
ral persons to be bound every one Will of a
for 10 l. apiece; this hath been Stranger.
held void, 17 E. 4. f. 5. b. 19 E. 4.
f. 1. For this lies at the Will of a
Stranger, whether he will be bound
or not.

But where I may do the things General Rule.
awarded my self, or force it to be
done, the Award is good, 5 H. 7.
22. 21 E. 4. f. 40.

If the Award be that one of the what shall be
Parties shall pay a Sum to the a good Dis-
other, and that the other in con- charge.
sideration shall discharge him of a
Bond, in which they two were
bound to another person :

In

Performance
of the Award
by Equity.
Pasch. 15 Car.
in B. R.

In this Case it was held that the thing was feasible by the Party himself; for if the day of payment was not come, the payment of the Mony at the day would be a good Discharge of the Bond, and so a good Acquittal of the other Party; and if the day of payment was past, it was held he might pay the Mony, and force the Obligee in Chancery to deliver up the Bond though forfeited, or else the Party might suffer an Action to be brought against him upon the Bond, and then discharge and pay it.

Where the
thing may be
done by Com-
pulsion.

It was also held that where any are seized, &c. to my use, and that I have an Interest and Power to compel them to do the thing awarded upon my part, that in such Case the Award is good, 17 E. 4. 5. and I ought to compel them.

General Rule.

And this is a general Rule, That where I may do the thing awarded my self without the Aid of another, or it lies in my power to enforce the doing thereof by others; in such Case the Award is good, and I am obliged to perform it.

CHAP.

C H A P. X.

That there be a means by Law to attain unto the thing awarded.

THIS is chiefly meant where the Submission is without Specialty, As,

If in Trespafs an Award be pleaded, that one Party should pay a Sum of Mony, and release to the other all Actions of Trespafs, &c. and that after the other should release to him, this is not good, because if the one pays the Mony and releases, he cannot after force the other to release to him.

Award to pay and release, and that after the other shall release.
22 H.6. 12, 18.
19 H. 6. 37, 38.

Yet it may be a good Plea if the Party pleading shews that he has performed his part, as appears after.

If the Defendant in an Action of Trespafs pleads an Award, that he should be bound to the other by a day not yet come, this will be no Bar, for if he should, the other would be without Remedy

Pleading Award to pay Mony, and the day not come.

medy to compel him to make the Bond. 5 E. 4. 7. 45 E. 3. 16.

Bond forfeited.

* Note any other thing besides payment of Mony, is called a Collateral matter.

General Rules.

28 H. 6. 12.

2 H. 4. 4.

5 E. 4. 7.

But if the submission were by Bond, though such a Plea as above will be no Bar to the Action, because there is no means to enforce the making of a Bond, Release, or other Collateral * Matter, yet if the party do not make it, he will thereby forfeit the Penalty of his Bond.

Where the submission is without Bond, if the Award be for payment of Mony at a day to come, it is good, because an Action of Debt will lye for the Mony upon such Award, if it be not paid, the Party, if he please, may resort to his force Action.

Also if an Award be to do a Collateral thing, as make a Release, &c. for which there is no remedy, yet if it appear to be executed, the Award will be held a good Plea, 19 H. 6. 37, 38.

And if the Collateral thing appear not to be executed, yet if the submission be by Bond, the Bond will be forfeited for non-performance of the thing awarded, 9 E. 4. 44. a.

As

As to pleading an Award in Bar of an Action, in these Cases, observe

1. That where an Award is for payment of Money, for which there is Remedy, and the day of payment not past, in such case an Award pleaded will be a good Bar to an Action, 20 H. 6. 18, 19. 2 H. 44. 9 E. 4. 51. 19 E. 4. 8. 45 E. 3. 16.

2. Where the day of payment is past, it will be no Bar to plead an Award, without pleading of payment by the Party; 20 H. 6. 12.

3. Where the day of payment is past, and though it appear that the Arbitrement is not executed, yet if there be no default in the Defendant, it may be a good Bar to plead an Award, 20 H. 6. 18. 2 H. 4. 1.

4. Where an Award is for doing a thing for which the Party hath no remedy (though the day be not come in which the thing ought to be done) in such case
it

it will be no Bar of an Action to plead the Award, 19 H. 6. 37. 5 E. 4. 7. 7 H. 4. 41.

C H A P. XI.

That an Award must be final.

THat it be a final end of the Controversies submitted.

This is to be understood with respect to what is said before, That though an Award may be good of part of the things only submitted, yet it must be final as to that part, or else it will be void.

Award that
the Parties
shall be non-
sult.

As if an Award be, That the Parties shall be non-suit one against the other, in Actions depending betwixt them; this Award is void being not final, for after non-suits the Parties may begin again, and thus there is no end of the Controversie, 19 H. 6. 36, 37. 8 E. 4. 10.

And so it is where the Award is of one side only, because it does
not

not determine the Controversie between the Parties.

And so where it is incertain, for such an Award cannot decide the matter in Controversie, 5 Co. 78.

And 'tis a general Rule, That the Law doth reject all Arbitrements, which leave the matter in Controversie in suspense or unconcluded, for it is the proper Office of an Arbitrement to put an end to Controversie, 8 E. 4. 12. 41, 42 *El. in Com. Banco, Emery cont. Emery.* General Rule.

Note, The Arbitrators may ordain in their Award, an Act to be done for the better performance of their Award as to enter into Bond, &c. 8 H. 6. 18. b. 19 H. 4. 1. a.

C H A P. XII.

Concerning an Umpire.

Umpire, how
to make his
Award of
parcel.

IF the Parties submit themselves to the Award of certain Persons, and if they cannot agree, then to the Ordinance of another, as Umpire: If the Arbitrators make their Award of Parcels, The Umpire shall not make his Award of the other remaining part.

But if the submission be such, That the Umpire shall make his Award of the whole or of part, then its said he may make Award of such part with which the Arbitrators have not medled, 39 H. 6. 10. a. 11. b.

When the
same time is
limited to the
Arbitrators
and Umpire.

In Debt upon a Bond Conditional to perform an Award, to be made by two, by such a day, and if they cannot agree, then to the Umpirage of A. B. so he awarded by the same time; and there said, that where the Arbitrators and Umpire have the same time, if
either

either make an Award its sufficient; but then all agreed, That an absolute refusal of the Arbitrators should be alledged, as to say, That they altogether refused, and not to say, That they did not, nor could not make the Award, 2 Keb. 562. 619. Syderf. 428. *Mod. Rep.* 15. The Arbitrators must first refuse.

If the Arbitrators do wholly desert it, the Umpire may Award; for if the Arbitrators desert only one while, they may take it up within the time, Syderf. 455. They must wholly desert.

But where the Arbitrators are left to chuse the Umpire in the same time, and do so, they thereby relinquish their power, especially where the Submission to an Umpire, is upon their disagreement, otherwise an Award by the Umpire within their time is void, 1 Keble 6. 848. 2 Keble 714. *Mod. Rep.* 274. Arbitrators chuse an Umpire in the same time.

In debt upon a Bond to perform an Award of Arbitrators, so as it be made by the second of March, and if not agreed then, to the umpirage of whom A. and B. elect, so as he Award by the fifth of Time given over to the Umpire.

The Law of Arbitrement.

of *March*. It was objected, That the Umpire was elected but the third of *March*, but the Court said, if he were elected on the fourth, it was sufficient, 3 *Keble* 387.

Note, That the usual course is now by Bond, with a time over for the Umpire, in case the Arbitrators make no Award.

C H A P. XIII.

Some things of Note concerning Arbitrement, Registred by Mr. Stiles in his Practical Register, as followeth.

Concerning
payment of
Mony in the
House of a
Stranger.

AN Award that is made, That one of the Parties who submitted themselves to the Award, shall pay mony in the House of a Stranger, is not good, for this is to Award him to do a thing which will make him a Trespasser,

fer, and so lyable to an Action,
which is unreasonable, *Mich. 22*
Car. B. R.

But if the Award be to pay the In or at the
Mony in the House of one of the House of a
Parties that submitted to the A- Stranger.
ward, such an Award is good, for
it implies a Licence from the Party
for him to pay it there, *Pract.*
Regist. 27.

Award to pay Mony in or at
the House of *J. S.* The Plaintiff
saith it was not paid at the House,
which the Court held to be
well enough, and if it were paid
in the House, it may be given
in Evidence on issue, That it was
paid at the House, *1 Keble 753.*
16 Car. 2. B. R.

An Award to pay Mony at the At the House
House of a Stranger may be of a Stranger.
good, for he may come to the
House in many cases and be no
Trespasser; but if he cannot
come to the Strangers House,
without being a Trespasser to
him, there such an Award is not
thought good, *Pract. Reg. 27.* and
by *Keble 1. 13 Car. 2.* Where pay-
ment

ment is to be in the House of a Stranger, he shall not be presumed to be able to perform it, but otherwise where the Payment is to be at the House of a Stranger.

Conditional
Award.
Pract. Reg.
P. 27.

A Conditional Award is not good because it is not final to determine the Matters in difference submitted to the Arbitration, *Mich. 22 Car. B. R.*

All the Mat-
ters must be
awarded on.

If all the Matters submitted to the Arbitrators be not awarded upon, the Award is not good, *Pascb. 23 Car. B. R. Pract. Reg. 27.*

It is, when the Submission is by Deed Conditional, See before *Chap. 6.*

An uncertain
Award.

An uncertain and doubtful Award is not good, because it makes not an end of all the Matters submitted unto by both Parties, but leaves them at large, to sue and trouble each other, as they were before the Award made, *Trim. 23 Car. B. R.*

Award void
in part, and
good in part.
Pract. Reg. 28.

An Award may be void in some part, and yet good in another, *viz.* if the Award do make an end of all the Differences submitted

mitted unto the Arbitrators by the Parties, *Trin. 23 Car. B. R. Mich. 24 Car. B. R.*

An Award ought to be final and certain, else it is not good, *Mich. 23 Car. B. R. Pract. Reg. 28.*

If each Party submitting to the Award hath power by the Award to compel the other Party either by Law or Equity to perform the Award, the Award is good enough although the Party be thereby put to his Action, *Mich. 24 Car. B. R. Pract. Reg. 28.*

An Award, that a thing shall be done to a Stranger is a good Award, if it appear that the Parties who submitted to the Award have benefit by the doing it, *Pract. Reg. 28. See before Chap. 6.*

If an Award be good in any part of it to all the Parties that did submit to it, if the Award be broken in that part, an Action will lie for that Breach, *Pract. Reg. 28.*

An Arbitrator cannot delegate or transfer the Power given him by the Parties that submitted to

to the Arbitration ; for it is contrary to the Submission ; but an Arbitrator may refer a ministerial act touching the Arbitration to another, *Pract. Reg.* 28.

As that the Parties shall enter into Bond (for such a Sum awarded) as Counsel shall advise, 19 E. 4. 1.

Note, It was held a good Award, that an Action should be commenced betwixt the Parties by advice of *W.* and *P.* 8 Ed. 4. 1. 10.

The Court will not suppose any thing to be awarded in an Award, which is not submitted unto, except the contrary be made to appear, *Pract. Reg.* 28.

Thus you see most of the former Cases confirmed by this Register. And farther,

That a thing may be awarded to be done to a Stranger, See before.

C H A P. XIV.

How an Arbitrement shall be expounded and intended.

EVery Arbitrement is a Judgment, 8 E. 4. 1. b. 8 E. 4. 10. a. a Judgment.
21 E. 4. 39. a.

And there is Diversity where a Man is judged by Authority of the Law, and by Election of the Party himself; for a Judge of Record does not give Judgment against the Parties if so be they are not called before him by Process of Law; but otherwise it is of an Arbitrator, who is Judge between the Parties. Diversity between Arbitrement and Judgment by Law.
8 E. 4. 2. a.

And whereas every Judgment of Record shall be executed literally according to the Warrant issuing out of the Record, upon and for the executing the said Judgment. Yet nevertheless, How an Arbitrement shall be expounded and intended.

Every Arbitrement ought to be expounded and intended according to the intent of the Arbitrators, 17 E. 4. 3.
21 E. 4. 39. a. b.
19 H. 6. 36. b.

trators, and not literally, 10 Co.
f. 57. b.

To be per-
formed in such
Sense as agrees
with the Law.
21 E. 4. 39. b.

But if the intent of the Arbitrators will not stand with the Law, then the Parties shall perform it according to those Words, in such Sense as agrees with the Law.

And note, It hath been held, That an Averment shall not be allowed to shew the intent of the Arbitrators, if it be not expressed in the Award, either directly or by Circumstance, *Dyer* 242.

C H A P. XV.

The Effect of an Arbitrement or Award.

THE Effect of an Arbitrement or Award is as follows:

By

By Arbitrement the Contro-^{Arbitrement}verſie paſſes into a Matter judged ^{paſſeth into} Judgment.
of, 49 E. 3. 3. a. 20 H. 6. 41. a. 6 H. 7. 11. b.
9 E. 4. 51. a.

And therefore, where the Party ^{How to plead} brings his Action for the Wrong ^{it.} done him, 'tis a good Plea, That ^{6 H. 7. 11. b.} he ſubmitted himſelf to the Ar- ^{9 E. 4. 51. a.}bitrement of ſuch and ſuch, who ^{20 H. 6. 12. b.} awarded that he ſhould pay ſo ^{40. a. b.} much, &c. but the day of pay- ^{28 H. 6. 12.}ment of it is not yet come. ^{5 E. 4. 7. a.}

But if the Day of Payment be ^{Tender of} paſſed, he ought to ſhew that he ^{Mony pleaded} tendred the Mony at the Day, ^{16 E. 4. 8. b.} and that he is yet ready to pay it, &c. 8 H. 6. 25. b. See before Chap. 10.

For Arbitrement by which the ^{Arbitrement} Arbitrators award, that one of ^{for Mony} the Parties ſhall pay Mony, does ^{gives Action.} give an Action, 5 E. 4. 7. a. 16 ^{6 H. 7. 11.} E. 4. 9. a. 17 E. 4. 2. b. 17 E. 4. 8. a. ^{9 E. 4. 51.}
Fitz. Nat. Brev. G. 121.

And it is now held by the Court, ^{When Debt on} That Debt upon an Award by ^{Award ſhall be} Word of Mouth is within the Sta- ^{within Statute} tute of Limitation, 21 Jac. 16. ^{of Limitation.}
That it muſt be ſued for within

2 Keb. p. 462. six years after the Cause of Action: But Debt upon an Award under Hand and Seal, is as if it were a Specialty, and so out of the Statute.

This is the same if the Submission be without Deed.

Party restored to his first Action.

49 E. 3. 3. a.

Or he may have Debt upon the Award.

49 E. 3. 3. a.

33 H. 6. 2. b. If the payment be made, first wrong is determined.

Double Action

And if the Parties do not perform the Arbitrement, the Party is restored to his first Action.

But yet it is at his Election to have a Writ of Debt, upon the Award, or the first Action.

But if the Payment be made, the first Wrong is altogether determined by the Award, 4 H. 6. 1. a. 25. b. 21 H. 7. 28. b.

And if the Arbitrators award, that one of the Parties shall pay so much Mony, and either of them is bound to the other to stand to the Award, the Party may have an Action upon the Award, and also the Deed if the Award be not performed. *Quære.*

21 E. 4. 41. b.
33 H. 6. 2. b.

Award of a Collateral things gives no Action.

If the Submission be by Word, and the Award is, That one of the Parties shall do a Collateral Act, other than payment of Mony, it

it gives no Action; and if it be not indeed executed and satisfied, the Arbitrement hath no Effect, and such Arbitrement does not determine the first Wrong, 20 H. 6. 19. a. 5 E. 4. 7. a. 11. b. 19 H. 6. 38. a.

Yet if the Submission be by Submission by Bond, if a Collateral Act be awarded to be done, if it be not performed, the Bond shall be forfeit, 9 E. 4. 44. a. Bond, and Bond forfeited.

And 'tis the usual course to sue the Bond on Non-performance of the Award. Usual course of Practice.

CHAP. XVI.

Concerning the Performance of an Award. With several Presidents of Awards, Umpirage and Release.

L Astly we are to consider the Performance of the Award, whereof it is said, That How the Parties ought to perform the Award.

The Parties ought to do all that in them is to perform it, 21 E. 4. 39. b. See before Chap. 9. They ought to use their utmost Endeavour.

Things to be
done two
ways, how to
be performed.

If by the Arbitrement it is awarded, That an A&t shall be done which a Man may perform in two manners, the one way by himself, and by the other way he must have the Aid of another person, the Party ought to perform it by such means as he himself can do, without the Aid of another.

21 E. 4. 40. b.

Must be total-
ly performed.

Arbitrement ought not to be performed in part, and in part not, 6 H. 7. 10. b.

May be per-
formed at se-
veral times.

8 E. 4. 10. b.

But though an Arbitrement cannot be made by the Arbitrators, part at one time and part at another time, yet it may be performed part at one time and part at another time.

But this must be before the Day limited.

How to be per-
formed when
no day is li-
mited.

21 E. 4. 41. a. b.
&c.

One A&t to
be done de-
pends upon
another to be
first done.

5 E. 4. 7. a.

The Parties shall have reasonable time allowed them for the performance of an Award if no time be limited, 20 E. 4. 8. b.

If the A&t which the Arbitrators award that one of the Parties shall perform, cannot be performed before another A&t first done by the other Party, if the
Party

Party does not do the first Act, the other is excused.

Arbitrement, that one Party shall pay Mony, and the other shall make a Release, it shall be done at one and the same time, if there be no Bond to perform the Award.

Payment of Mony, and release at the same time.
21 H. 7. 28. b.

But if there be an Obligation to perform the Award, then either ought to perform his part under the peril of the Obligation, 21 H.

When Parties must perform Award at their Peril.
7. 28. b.

If a Bond be made to stand to an Arbitrement, though the Arbitrement is void in Law, yet it is said it ought to be performed, otherwise the Bond shall be forfeited.

22 H. 6. 46. b.

This must be meant when the Award is only void in part, See before Chap. 6.

But if an Action be brought upon such void Award, the Action shall not be maintained.

22 H. 6. 46. b.

If the Matter contained in the Award, and the Matter contained in the Submission, of which the Arbitrators ought to award,

Difference in Words between the Award and Submission.

The Law of Arbitrement.

award, differ in Words or in Circumstance.

7,8 El. 242. b.
52.

Averment not
allowed.

The Parties to the Arbitrement shall not in a Suit thereupon be allowed to aver, that it is all one, *Dyer* 242. See before *Chap.* 14.

Thus have I shewn you the whole Law of Arbitrement by Method and Rule ; wherein if you find some things twice , it is not without some Reason, either relating to the Method or to the Matter of an Award.

There may be many other things said of Arbitrement in later Books, as in the three Books of *Keble's* Reports ; but these things being no more than what is already said, and especially belonging to Pleading, I shall omit them.

Several

*Several Forms of Awards,
Arbitrements and Um-
pirage.*

Mr. *West* in his *Treatise Symb.*
Part 2. Sect. 45. gives us a Pre-
sident to this purpose.

*An Arbitrement or Award of Lands,
by which the Party covenanteth to
perform it.*

THIS Indenture made the
1st day of *Aug.* in the fourth
year of the Reign of our Sove-
reign Lord and Lady *William* and
Mary by the Grace of God of
England, Scotland, France and *Ire-
land* King and Queen, Defenders
of the Faith, &c. Annoque Domi-
ni, 1692. between *A. B.* of, &c.
of the one part, and *C. D.* of, &c.
of the other part, Witnesseth,
That whereas there hath been
and yet is Contention, Vari-
ance and Suit betwixt the said
Parties

* Setting forth
the bounds
and borders
of the Ground.

Parties, not only for and concerning the Right, Title and Interest of and in a certain quantity of Ground, by estimation two Acres or thereabouts, lying in *E.* and adjoining, (*&c.*) * For the friendly ending and appeasing of which said Variances and Controversies, the said Parties have compromised and submitted, and by these presents do compromise and submit themselves and all Matters in variance aforesaid, to the Order, Arbitrement, Award, Judgment, final End and Determination of *E. F.* and *G. H.* of *&c.* Arbitrators indifferently chosen, elected and named, as well on the part and behalf of the said *A. B.* as of the aforesaid *C. D.* Whereupon the said Arbitrators having viewed the said Ground in variance, and perused divers Writings and Evidences concerning the same, and heard the Testimony and Witness of divers ancient Men and Neighbours, dwelling nigh the said Ground, as well touching the Occupation and
Usage

Usage of the said Ground by the said *A. B.* and his Ancestors, as also the said ways used thereunto, by the Inhabitants of the Neighbourhood, time out of mind; Do make and declare their Award, Judgment, final End and Determination of and concerning the Premises and every part thereof. And to that end the said *A. B.* and *C. D.* do, and each of them by these Presents doth, severally Covenant and Grant, to and with the other for themselves, their Heirs, Executors and Administrators, in manner and form following, that is to say, First, the said Arbitrators do Order, Award and Judge, and the said *C. D.* is so contented and agreed, and accordingly doth Covenant and grant for him and his Heirs, to and with the said *A. B.* and his Assigns, That he the said *A. B.* shall and may from henceforth have, hold, occupy and quietly enjoy to him and his Heirs for ever, the said parcels or quantity of Ground,
con-

Or other time
as is thought
fit.
And with such
Exceptions as
may be
thought fit.

containing by estimation two Acres, lying and being ——— (&c. setting forth the Buttels and Bounds, and the substance of the Award) ——— and that the said C. D. his Heirs and Assigns, shall and will at all times hereafter, at his and their proper costs and charges, and within the space of Two years, next ensuing the date hereof, do make, acknowledge, and suffer, or cause to be made acknowledged and suffered, all and every Act and Acts, Thing and Things for the further, better and more perfect assuring and sure making unto the said A. B. his Heirs and Assigns, for ever, as well the said parcel or quantity of Ground, containing about two Acres, as also of the said ways in manner and form before expressed, as by the said A. B. his Heirs or Assigns, or his or their Counsel learned in the Laws, shall for that purpose be reasonably advised, devised or required, according to the true intent and meaning of these Presents.

In

In consideration whereof the said *A. B.* hath paid to the said *C. D.* at the ensealing hereof, at the Request and by the Award and Order of the said Arbitrators, the Sum of 100*l.* of lawful Mony of *England.* **In Witness** whereof, not only the said Parties to these present Indentures of Award interchangeably have put their Seals, and subscribed their Names, but also the said Arbitrators, to both the parts of these Indentures have put their Hands and Seals the day and year first above written.

Sealed and delivered
in the presence of

Note, That all such Covenants and Conditions as are usually made for the assurance or enjoying of Lands or Tenements, Goods and Chattels may be inserted into Awards, as the Arbitrators, &c. shall think fit.

Another

*Another more usual and formal
Award upon submission by Bond.*

* Note, It need not be Indented, unless the Bonds of Submission do so provide.

TO all People to whom this present Writing of Award * Indented shall come, *A. B.* and *C. D.* of (*&c.*) send Greeting, Whereas great Variance, Strife, Debate and Controversie hath heretofore been had, moved and stirred, between *E. F.* of (*&c.*) and *G. H.* of (*&c.*) of, for and concerning ——— (*&c.* reciting the Matters in Controversie, —) for the appeasing and ending whereof, either of the said Parties by their mutual Assents, Consents and Agreements, have submitted and bound themselves, either to the other, by their severall Writings Obligatory, bearing date — [*&c.* setting forth the date —] in the Sum of, [*&c.* mentioning the Penalty] To stand to, obey, abide, observe perform, fullfil and keep the Award, Order, Arbitrement,

ment, Judgment, final End and Determination of Us the said A. B. and C. D. Arbitrators indifferently Elected and Chosen between the said Parties to Arbitrate, Award, Order, [*&c.* as the Words in the Condition of the Bond are expressed] — of and for the Premisses, as by the said several Obligations, with the Conditions for the performance thereof, relation being thereunto had, more at large may appear. Now know ye, That we the said Arbitrators having taken upon us the Business and Charge of the same Award, and willing to set the said Parties at Peace and Concord, by making a final End and Determination concerning the Premisses in Controversie, and having taken good advice and deliberation, and heard and examined both their Title, Allegations and Proofs offered, concerning the said Premisses in Controversie, do, with the assent and consent of both the said Parties, make, publish, declare and give up

The Law of Arbitrement.

*** Setting forth
the Judgment
or Award.**

up this our Award concerning
the Premisses, in manner and
form following, viz. First, We
Award, Order, Judge and Deter-
mine, That, — * &c. Also we a-
ward, &c. Finally we award, judge
and determine, &c. — In Witness
whereof we the said Arbitrators,
and also both the said Parties to
the Submission, have interchange-
ably put our Hands and Seals,
day of 'Annoq;
Domini, 1692.

*Another most usual and general Form
of an Award upon a submission by
Bond.*

*** Reciting the words in the Condition of the Bond.**

TO all People to whom this
present Writing of Award
indented, shall come *A. B.* of, &c.
and *C. D.* of, &c. Arbitrators in-
differently chosen, elected and
named, by and between *E. F.* of,
&c. and *G. H.* of, &c. to Arbi-
trate, * Award, Order, Judge and
Determine, of, for, upon and con-
cerning all and all manner of
Action

Action and Actions, Cause and Causes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespases, Damages and Demands whatsoever, at any time before our said Election, had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending, by or between the said Parties, as by the several mutual Bonds or Writings Obligatory of the said Parties, with the Conditions thereof, relation being thereunto had, more fully and at large may appear. Now know ye, That we the said Arbitrators, in pursuance of our said Election, and the power given us thereby, for the ending of all the Matters to us therein submitted, and for the future Peace and quiet of the said Parties concerning the Premisses, do Arbitrate, Award, Order, Judge and Determine thereupon as followeth, First, (&c. * — In Wit- *Setting forth
ness whereof, we the said Arbitrators have to these our present
In- the Judgment.

The Law of Arbitrement.

Indentures of Award, interchangeably set our Hands and Seals, the day of
Annoq; Domini, 1692.

*The Form of an Umpirage, briefly
 thus:*

TO all People to whom this present Writing shall come, I *A. B.* of *C.* &c. Umpire indifferently chosen by *E. F.* of, &c. and *G. H.* of, &c. having deliberately heard and understood the Grievs and Allegations and Proofs of both the said Parties, and willingly, as much as in me lieth, to set the said Parties at unity and good accord, do by these Presents, arbitrate, award, order, deem, decree and judge, That the said *E. F.* his Executors or Administrators, shall well and truly pay or cause to be paid unto the said *G. H.* his Executors, Administrators or Assigns, at or in the dwelling House, &c. the full Sum of
 Ten

Ten Pounds of lawful Mony of
England on the first day of *September* next ensuing the Date here-
of; and that upon payment there-
of either of the said *E. F.* and
G. H. shall seal, subscribe, and as
his several Act and Deed, deliver
unto the other of them a general
Release in writing of all Matters,
Actions, Suits, Causes of Actions,
Bonds, Bills, Covenants, Contro-
versies and Demands whatsoever,
which either of them may, might
or in any wise ought to have of,
and against the other of them by
reason aforesaid, or means of any
Matter, Cause or Thing whatso-
ever from the beginning of the
World until the 20th Day of
* *July* now last past. *In Witness* * The Day of
whereof I have hereunto set my the Date of
Hand and Seal the Day of the Bonds of
in the year of the Submission,
Reign of, &c. *Annoque Domini,*
1692.

The

The Form of the Release.

Naming the
Parties, their
Places, and
Trades or
Qualities.

KNOW all Men by these Presents, That I E. F. of, &c. have remised, released, and for ever quit claimed, and by these Presents do for me, my Heirs, Executors and Administrators remise, release, and for ever quit claim unto G. H. of, &c. his Heirs, Executors and Administrators, all and all manner of Actions, Cause and Causes of Actions, Suits, Bills, Bonds, Writings Obligatory, Debts, Dues, Duties, Accounts, Sum and Sums of Money, Judgments, Executions, Extents, Quarrels, Controversies, Trespases, Damages and Demands whatsoever, which against the said G. H. I ever had, now have, and which I, my Heirs, Executors or Administrators shall or may have Claim, Challenge or Demand for or by reason or means of any Matter, Cause or Thing whatsoever

ever from the beginning of the
World until the 20th Day of *July*
now last past. *In Witness* whereof
I have hereunto set my Hand and
Seal this day of in
the year of the Reign of,
&c. Annoq; Domini, 1692.

Sealed and delivered
in the presence of

Note, You may date the Re-
lease upon the day to which
it ought to release, and then
say, *From the beginning of the*
World unto the day of the date
of these Presents.

F I N I S.



